BRB No. 11-0207

TERRI TRUCZINSKAS (Widow of MICHAEL W. TRUCZINSKAS)	)	
Claimant-Petitioner	)	
v.	)	
G.D. ARABIA LIMITED	)	DATE ISSUED: 12/13/2011
and	)	
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA/ CHARTIS MEMSA HOLDINGS, INCORPORATED	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Colleen A. Geraghty, Administrative Law Judge, United States Department of Labor.

Donald E. Wallace (MacDonald & Wallace), Quincy, Massachusetts, for claimant.

Roger A. Levy and James M. Ralph (Laughlin, Falbo, Levy & Moresi LLP), San Francisco, California, for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

DOLDER, Chief Administrative Appeals Judge:

Claimant appeals the Decision and Order Denying Benefits (2010-LDA-00034) of Administrative Law Judge Colleen A. Geraghty rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (the Act). We must affirm the administrative law judge's findings of fact and conclusions of

law if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant, the widow of the deceased employee, filed a claim seeking death benefits from employer pursuant to Section 9 of the Act, 33 U.S.C. §909. The circumstances which led to the filing of this claim are well-known to the parties and will not be set forth in detail here. To briefly summarize, decedent, claimant's husband, was employed by employer in Tabuk, Saudi Arabia, where his employment duties involved training the tank division of the Saudi Arabian army. While in Saudi Arabia, the decedent lived in an employer-provided villa located within a walled residential compound and guarded by the Saudi Arabian military police. In the early morning of December 5, 2008, decedent was found hanging by a rope from a crossbeam in his villa. The Saudi Arabian death notification form identifies decedent's cause of death as suffocation from hanging. CX 6.

The parties stipulated, *inter alia*, that decedent died in Tabuk on December 5, 2008, but disagreed as to whether decedent's death was self-inflicted. Employer averred that decedent's death was the result of suicide. Claimant, in seeking death benefits under the Act, disputed that the decedent committed suicide; rather, claimant specifically asserted that the decedent could have been killed by Saudi Arabian religious police or vigilantes, by third-country national workers with access to the decedent's residential compound, or by one of the decedent's co-workers. Claimant did not allege, however, that the conditions of decedent's employment gave rise to a psychological injury which may have led him to take his own life or that decedent died from an accidental self-inflicted injury.

The administrative law judge denied the benefits sought by claimant, finding that claimant failed to establish that the decedent's death was causally related to his employment. Claimant appeals, contending that the administrative law judge erred in finding that the decedent's death did not arise out of his employment. Employer responds, urging affirmance.

In establishing that an injury and/or death arises out of the employee's employment, a claimant is aided by the Section 20(a) presumption, 33 U.S.C. §920(a), which applies to the issue of whether the employee's injury and/or death is causally related to his employment. *See Bath Iron Works Corp. v. Fields* , 599 F.3d 47, 52, 44 BRBS 13, 15(CRT) (1st Cir. 2010). The Section 20(a) presumption is invoked once the claimant establishes a *prima facie* case by showing that the employee sustained a harm and that workplace conditions existed or that a workplace accident occurred which could have caused the harm. *Id.*, 599 F.3d at 53, 44 BRBS at 15(CRT); *Bath Iron Works Corp.*

v. Preston, 380 F.3d 597, 605, 38 BRBS 60, 65(CRT) (1st Cir. 2004); *see also U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). The administrative law judge in this case found claimant entitled to invocation of the Section 20(a) presumption, a finding that is not challenged by employer and is therefore affirmed.[1]

Once, as here, the Section 20(a) presumption is invoked, the burden shifts to employer to produce substantial evidence that decedent's death was not related to his employment. *See Fields*, 599 F.3d at 53, 44 BRBS at 15(CRT); *Preston*, 380 F.3d at 605, 38 BRBS at 65(CRT). If the administrative law judge finds that the Section 20(a) presumption is rebutted, then all relevant evidence must be weighed to determine if a causal relationship has been established, with claimant bearing the burden of persuasion. *Id.; see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

[1]Claimant reiterates on appeal the argument she made before the administrative law judge that the decedent's death occurred in a "zone of special danger" and therefore occurred within the scope of his employment. Under Section 2(2) of the Act, 33 U.S.C. §902(2), an injury or death must arise out of and in the course of employment. An injury occurs in the course of employment if it occurs within the time and space boundaries of the employment and in the course of an activity whose purpose is related to the employment. *See, e.g., Palumbo v. Port Houston Terminal, Inc.*, 18 BRBS 33 (1986). However, in cases arising under the Defense Base Act, the United States Supreme Court has held the injury may be within the course of employment even if the injury did not occur within the space and time boundaries of work, so long as the employment creates a "zone of special danger" out of which the injury arises. *O'Leary v. Brown-Pacific-Maxon, Inc.*, 340 U.S. 504 (1951).

In this case, the administrative law judge acknowledged that the zone of special danger doctrine applies, Decision and Order at 10-11, and properly found, consistent with this doctrine, that claimant satisfied the working conditions element of her *prima facie* case under Section 20(a). *Id.* at 12. Thus, as the administrative law judge effectively determined that the requirement that decedent's death have occurred within the course of his employment was satisfied, claimant's arguments regarding the zone of special danger having no continuing relevance on appeal. The critical issue on appeal involves the "arising out of employment" requirement of Section 2(2), an inquiry which entails, in this case, determining whether the administrative law judge properly found that decedent's death was not causally related to the conditions and obligations of his employment with employer.

In this case, the administrative law judge addressed the evidence regarding the obligations and conditions of decedent's employment and the circumstances of his death. She determined that employer produced substantial evidence to counter claimant's theory that the decedent was murdered and to support a finding that the decedent committed suicide. The administrative law judge therefore found that employer rebutted the Section 20(a) presumption that the decedent's death was causally related to his employment. Decision and Order at 13-14. We reject claimant's contention that the administrative law judge erred in finding employer's evidence sufficient to rebut the Section 20(a) presumption. The fact that the evidence in this case is susceptible to opposing inferences is not material. *See, e.g., Sprague v. Director, OWCP*, 688 F.2d 862, 15 BRBS 11(CRT) (1st Cir. 1982). Here, the administrative law judge found that employer produced such relevant evidence as a reasonable factfinder *could* accept as adequate to support the finding that decedent was not murdered, but rather committed suicide. *See generally Fields*, 599 F.3d at 55, 44 BRBS at 17(CRT). The administrative law judge's drawing of this inference is within her discretion and is rational based on the evidence presented. *Bath Iron Works Corp. v. White*, 584 F.2d 569, 8 BRBS 818(CRT) (1st Cir. 1978). Thus, as claimant has not established error in the administrative law judge's consideration of the evidence, we affirm the administrative law judge's finding that employer rebutted the Section 20(a) presumption.

In weighing the evidence as a whole, the administrative law judge concluded that claimant did not meet her burden of establishing that the decedent was murdered. Decision and Order at 14-15. In this regard, the administrative law judge found that claimant's theories regarding murder were speculative and were unsupported by the weight of the evidence. *Id.* Specifically, the administrative law judge credited the evidence regarding the discovery of the decedent's body, the absence of any evidence that a physical struggle had occurred in the decedent's villa, the lack of persuasive evidence establishing a motive for co-workers to harm the decedent, and the absence of evidence that the Saudi Arabian religious police were aware of any activities by the decedent that the police would have viewed as objectionable. *Id.* In considering the evidence of record as a whole, the administrative law judge properly found that the record does not establish that the decedent was murdered, but rather supports the inference that the decedent committed suicide. The administrative law judge properly found that claimant did not establish that the decedent's death was causally related to the obligations or conditions of his employment in Saudi Arabia. The Board is not empowered to reweigh the evidence, but must accept the rational inferences and findings of fact of the administrative law judge that are supported by the record. *See, e.g., Bath Iron Works Corp. v. U.S. Dep't of Labor [Knight]*, 336 F.3d 51, 37 BRBS 67(CRT) (1st Cir. 2003); *Bath Iron Works Corp. v. Director, OWCP [Hutchins]*, 244 F.3d 222, 35 BRBS 35(CRT) (1st Cir. 2001). In this case, the administrative law judge's conclusion that claimant did not meet her burden of establishing that the decedent's death was causally related to the obligations and conditions of his employment with employer is

both rational and supported by substantial evidence. Therefore, the administrative law judge's denial of benefits, premised on claimant's failure to establish a causal link between the decedent's death and his work for employer, is affirmed.[2] *See Bath Iron Works Corp. v. Director, OWCP [Harford],* 137 F.3d 673, 32 BRBS 45(CRT) (1st Cir. 1998); *see also Greenwich Collieries,* 512 U.S. 267, 28 BRBS 43(CRT).

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

I concur:

_____
ROY P. SMITH
Administrative Appeals Judge

[2]Thus, we need not address claimant's contention that employer did not present substantial evidence that the decedent had a "willful intention" to injure or kill himself, an argument that relates to Sections 3(c) and 20(d) of the Act, 33 U.S.C. §§903(c), 920(d). Section 3(c) excludes from coverage a death that was occasioned by the employee's willful intent to injure or kill himself; Section 20(d) affords the claimant the benefit of a presumption that the employee's death was not due to his willful intent to injure or kill himself. Even if an injury/death has arisen out of and in the course of employment, it is not compensable if the injury/death was occasioned by the willful intention of the employee to injure himself. *See Jackson v. Strachan Shipping Co.,* 32 BRBS 71 (1998). Issues involving Section 3(c) and 20(d) arise only if a causal relationship between the injury and/or death and the employment is established. In light of our affirmance of the administrative law judge's denial of benefits on the basis that claimant did not establish a causal relationship between the decedent's death and his employment with employer, claimant's arguments with respect to Sections 3(c) and 20(d) are unavailing.

McGRANERY, Administrative Appeals Judge, dissenting:

I respectfully dissent from the majority's decision to affirm the administrative law judge's decision denying benefits. I believe that the administrative law judge and the majority have erred in holding that the evidence severs the connection between the employee's death in a zone of special danger and his employment. My review of the record reveals that the administrative law judge and the majority also erred in holding that the weight of the evidence establishes that the employee took his own life. Because employer's evidence is insufficient to rebut the presumption of coverage, I would vacate the administrative law judge's decision and remand the case for payment of benefits.

The Zone of Special Danger Doctrine

As claimant correctly argues, the issues presented in this case, arising under the Defense Base Act, must be analyzed in light of the doctrine of the zone of special danger. There is no dispute that the doctrine of the zone of special danger applies to this case, even employer and the administrative law judge acknowledge that. At the time of death, on December 5, 2008, the employee was working in Tabuk, Saudi Arabia, where he trained the Saudi military in the use of tanks.[1] His body was found hanging from a crossbeam in the hallway of the villa where the employee resided. It was in a fortified compound protected by Saudi authorities and the landlord. Employer rented the entire compound for its employees. Because the employee went to Saudi Arabia to work for employer, and he was living in the villa in Tabuk as a condition of his employment, claimant is entitled to the presumptions that the employee's death arose out of the zone of special danger in which his employment placed him, pursuant to 33 U.S.C. §920(a) and that his death was not a suicide, pursuant to 33 U.S.C. §920(d).[2]

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[1]In *O'Keeffe v. Smith, Hinchman & Grylls Assoc., Inc.*, 380 U.S. 359, 363 (1965), a seminal case discussing the zone of special danger doctrine, the Supreme Court described the decedent's environment in Korea as "exacting and unconventional conditions . . .", words equally applicable to the employee's environment in Saudi Arabia.

[2]33 U.S.C. §920 provides in relevant part:

> In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of substantial evidence to the contrary—
>
> (a) That the claim comes within the provisions of this chapter.
>
> * * *

The administrative law judge properly applied the zone of special danger doctrine to invoke the Section 20(a) presumption relating the employee's death to his work. The Supreme Court declared the doctrine in *O'Leary v. Brown-Pacific-Maxon, Inc.*, 340 U.S. 504 (1951), *rev'g Brown-Pacific-Maxon, Inc. v. O'Leary*, 182 F.2d 772 (9th Cir. 1950). The Supreme Court held that the circuit court had misapplied 33 U.S.C. §902(2) which authorizes payment of compensation under the Act only for "accidental injury or death arising out of and in the course of employment." Writing for the Court, Justice Frankfurter explained:

> The Longshoremen's and Harbor Workers' Act authorizes payment of compensation for 'accidental injury or death arising out of and in the course of employment.' §2(2), 44 stat. 1425, 33 U.S.C. §902(2). As we read its opinion the Court of Appeals entertained the view that this standard precluded an award for injuries incurred in an attempt to rescue persons not known to be in the employer's service, undertaken in forbidden waters outside the employer's premises. We think this is too restricted an interpretation of the Act. Workmen's compensation is not confined by commonlaw conceptions of scope of employment. *Cardillo v. Liberty Mutual Ins. Co.,* 330 U.S. 469, 481, 67 S.Ct. 801, 808, 91 L.Ed. 1028; *Matter of Waters v. William J. Taylor Co.,* 218 N.Y. 248, 251, 112 N.E. 727, 728, L.R.A. 1917a, 347. The test of recovery is not a causal relation between the nature of employment of the injured person and the accident. *Thom v. Sinclair,* (1917) A.C. 127, 142. Nor is it necessary that the employee be engaged at the time of the injury in activity of benefit to his employer. All that is required is that the 'obligations or conditions' of employment create the 'zone of special danger' out of which the injury arose. *Ibid.*

O'Leary, 340 U.S. at 506-507. Justice Frankfurter concluded that the evidence supported the inference that the employee acted reasonably in attempting to rescue someone who had fallen into treacherous waters and that his death may fairly be attributable to the risks of his employment.[3] The zone of special danger doctrine serves to vindicate the purposes of the Defense Base Act. Judge Wisdom discussed the Act's broad coverage in *O'Keeffe*

> (d) That the injury was not occasioned by the willful intention of the injured employee to injure or kill himself or another.

[3]Justice Frankfurter did not respond to Justice Minton's observation in his dissenting opinion, "The only relationship his employment had with the attempted rescue and the following death was that his employment put him on the Island of Guam." *Id.* at 509.

v. Pan American World Airways, Inc., 338 F.2d 319, 322 (5th Cir. 1964), *cert. denied*, 380 U.S. 951 (1965):

> Employees working under the Defense Bases Act, far away from their families and friends, in remote places where there are severely limited recreational and social activities, are in different circumstances from employees working at home. Personal activities of a social or recreational nature must be considered as incident to the overseas employment relationship.

A few years ago, in *Kalama Services, Inc. v. Director, OWCP*, 354 F.3d 1085, 1091, 37 BRBS 122, 125(CRT) (9th Cir. 2004), *cert. denied*, 543 U.S. 809 (2004), the Ninth Circuit had occasion to review cases in which the courts have applied the doctrine of the zone of special danger. The court cited:

> *See, e.g., O'Keeffe v. Smith, Hinchman & Grylls Assoc., Inc.*, 380 U.S. 359, 363-64, 85 S.Ct. 1012, 13 L.Ed. 2d 895 (1965) (employee drowned in a weekend boating accident 30 miles from his job site at a defense base in South Korea); *Self v. Hanson*, 305 F.2d 699, 702-03 (9th Cir. 1962) (employee was injured during a late-night rendezvous with her supervisor in a parked car that was hit by an out-of-control army weapons carrier in Guam); *Takara v. Hanson*, 369 F.2d 392 (9th Cir. 1966) (employee was hit by a truck while hitchhiking back to his campsite after dinner at a local restaurant in Guam); *Pan Am. World Airways, Inc. v. O'Hearne*, 335 F.2d 70, 70-71 (4th Cir. 1964) (death of employee in an after-hours jeep accident in the Bahamas arose out of the "zone of special danger" even though the jeep may have been speeding and the employer may not have authorized the use of its jeep); *Gondeck v. Pan Am. World Airways, Inc.*, 382 U.S. 25, 26-27, 86 S.Ct. 153, 15 L.Ed.2d 21 (1965) (same).

In these cases, courts followed the Supreme Court's teaching in *O'Leary*, that the standard to be applied does not require a causal relation between the nature of the employment of the injured person and the accident. As the Supreme Court stated in *O'Keeffe*, "All that is required is that the 'obligations or conditions' of employment create the 'zone of special danger' out of which the injury arose." 380 U.S. at 363. As the Ninth Circuit's review of the caselaw shows, injuries sustained while the claimants were engaged in misconduct have been deemed to arise out of conditions of employment when they resulted from accidents which occurred in a zone of special danger. *E.g. Self*, 305 F.2d at 702-03; *Pan Am. World Airways, Inc.*, 338 F.2d at 70-71.

The Supreme Court also set forth in *O'Leary* the standard employer's evidence must meet to rebut the presumption of coverage in cases involving the zone of special danger: evidence that the employee had "go[ne] so far from his employment and become so thoroughly disconnected from the service of his employer that it would be entirely unreasonable to say that injuries suffered by him arose out of and in the course of his employment." (citation omitted). 340 U.S. at 507. In *Kalama,* the Ninth Circuit cited with approval a Board decision upholding a denial of benefits to a widow whose husband was killed in a zone of special danger, where the claimant's conduct "had effectively severed any causal relationship which may have existed between the conditions created by the employee's job and his death," 354 F.3d at 1092, 37 BRBS at 125(CRT) (quoting *Kirkland v. Air America, Inc.,* 23 BRBS 348, 349 (1990)) (Claimant was the employee's widow who filed a claim for death benefits after the employee was murdered in Laos, during a burglary in which she had participated.)

The evidence required to rebut the presumption of coverage must be "substantial;" that determination is a legal judgment, subject to review by the Board. *Bath Iron Works Corp. v. Fields,* 599 F.3d 47, 55, 44 BRBS 13, 17(CRT) (1st Cir. 2010). The First Circuit has recognized that the Board is "entitled to independently examine the record and to exercise its own judgment as to whether the substantial evidence standard was met." *Id.* (citation omitted). Substantial evidence has been described as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consolidated Edison Co. v. N.C.R.B.,* 305 U.S. 197, 229 (1938). *Accord Parsons Corp v. Director, Office of Workers Compensation,* 619 F.2d 38, 41 (9th Cir. 1980) (quoting *Matter of District of Columbia Workers' Compensation Act,* 554 F.2d 1075, 1084 (D.C. Cir.) *cert. denied,* 429 U.S. 820 (1976)).

The Administrative Law Judge's Analysis of the Evidence

The administrative law judge did not specifically consider the rebuttal standard set out in *O'Leary, i.e.,* whether the employee's conduct had so thoroughly disconnected him from the service of his employer that his injuries could not be considered to arise out of his employment. Instead, she considered whether evidence supported the various murder theories claimant advanced and whether the evidence indicated suicide. She considered together both the Section 20(a) and (d) presumptions and concluded that the weight of the evidence established suicide, and therefore, rebutted both presumptions. Because a determination of suicide would be sufficient to demonstrate that the employee had thoroughly disconnected himself from the service of his employer, pursuant to *O'Leary,* the administrative law judge's failure to specifically apply the correct standard was harmless error.

The administrative law judge identified three categories of evidence to support her conclusion that employer had established rebuttal of both presumptions. First, she pointed to the absence of evidence of a motive to murder the employee by religious police, third-party nationals, the employee's supervisor, Mr. Hu, or his co-worker, Mr. Wolf. I believe the administrative law judge was mistaken in attaching any significance to this lack of evidence, since the evidence in the record is so scant about all of these people, and about the employee's life in Tabuk.

Second, the administrative law judge cited evidence of "issues in employee's life in Saudi Arabia that may have been a source of internal conflict. . ." which would support an inference of suicide. Decision and Order at 14. The record reflects that these issues had been longstanding, yet there was no evidence to explain why on December 5, 2008, they should have rendered him hopeless, so that he felt compelled to take his life. In contrast, the evidence from his family, friend, and supervisor uniformly showed that the employee was happy, anticipating a promotion, planning a trip home, and buying Christmas presents for his family. That evidence is a heavy counterweight to the administrative law judge's inference that his personal issues created such despair in his heart that he resorted to suicide.

Third, the administrative law judge cited Mr. Wolf's uncontradicted testimony, that he found the employee's body hanging from a crossbeam, without sign of blood or bruising, and a chair nearby; she held this to be "evidence which a reasonable mind might accept as sufficient to support a finding that the employee's death was the result of suicide." Decision and Order at 14. The administrative law judge thereby overlooked the uncontradicted, conflicting evidence that the condition of the employee's body was inconsistent with death by hanging. Furthermore, the administrative law judge's determination to credit Wolf's testimony without reservation as evidence of suicide is surprising since earlier in the same paragraph she noted that Wolf had recently been interviewed by Saudi police.[4] *Id.* The record reflects that not only have Saudi police interrogated Wolf repeatedly, they have also taken blood samples from him, thereby suggesting questions about his involvement in the employee's death. Moreover, on its face, Wolf's testimony is inconclusive. Without the autopsy report to show the cause of death, or at least medical evidence establishing that the body was not moved after death, testimony regarding where the body was found at an indeterminate time after death is not sufficient to support a reasonable conclusion that the employee took his own life. Nevertheless, the administrative law judge found Wolf's testimony sufficient to rebut the

[4]The administrative law judge stated that Wolf had been interviewed "as recently as the Spring of 2010. . ." Decision and Order at 14, but Wolf testified that his most recent interview had been about five months prior to his testimony, which would place the interview about December 20, 2009. Tr. at 693.

presumption that the employee did not willfully kill himself, and weighing the evidence together, she concluded that employer had established that the employee's death was not compensable under the Act because it resulted from suicide, pursuant to 33 U.S.C. §903(c).[5]

The Majority's Analysis of the Administrative Law Judge's Decision

The majority affirms the administrative law judge's decision denying benefits, but not based upon her analysis that the evidence established suicide. The majority concludes that the administrative law judge properly found that claimant's theories regarding murder were speculative and unsupported and that the weight of the evidence supported the inference that the employee committed suicide. Yet the majority does not attempt to affirm the administrative law judge's determination that the evidence established suicide. Apparently, the majority recognizes that the record lacks evidence of willful intent, which is necessary to overcome the Section 20(d) presumption. Such evidence must be substantial and unambiguous. *See Arrar v. St. Louis Shipbuilding*, 780 F.2d 19, 18 BRBS 37(CRT) (8th Cir. 1985).

The majority's holding is that claimant has failed to establish that the employee's death was causally related to his employment. The majority asserts, "claimant did not meet her burden of establishing that the decedent was murdered." In so holding, the majority fails to recognize that the zone of special danger doctrine applies in this case to provide the causal connection necessary to invoke the Section 20(a) presumption. To rebut the presumption, the doctrine places the burden on employer to produce substantial evidence that the employee had "go[ne] so far from his employment and become so thoroughly disconnected from the service of his employer that it would be entirely unreasonable to say that injuries suffered by him arose out of and in the course of his employment." *O'Leary*, 340 U.S. at 507. Accordingly, the majority errs in placing the burden of persuasion on claimant to establish that the injury is covered by the Act; the burden is on employer to rebut the presumption of coverage.

The case at bar demonstrates the wisdom of that doctrine. It would be unrealistic and unfair to expect claimant to provide the reason for the employee's unexpected and unnatural death in Tabuk, Saudi Arabia. She was thousands of miles away from him at the time of his death. She was unable to obtain from Saudi authorities a copy of the

[5]33 U.S.C. §903(c) provides:

> No compensation shall be payable if the injury was occasioned solely by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another.

autopsy report. She was also unable to obtain a copy of the police investigation report. There are no known witnesses to the employee's death; the employee was in Saudi Arabia to work for employer; his residence was provided by employer; his belongings were packed-up by fellow employees; his neighbors were fellow employees. As the Supreme Court observed in *Del Vecchio v. Bowers*, 296 U.S. 280, 286 (1935), upholding application of the Section 20(d) presumption against suicide, "the likelihood that testimony as to cause of death would have been more readily available to the employer than to claimant, justifies a presumption." According to the zone of special danger doctrine, the burden was on employer to provide substantial evidence that the employee's death resulted from conduct by which he had totally disconnected himself from the service of employer. Because the majority fails to apply the zone of special danger doctrine, and, therefore, does not require employer to rebut the presumption of coverage, its decision is fundamentally wrong.

The majority's decision is also wrong insofar as it purports to affirm the administrative law judge's determination that the weight of the evidence establishes that the employee caused his own death. My review of the record reveals that the administrative law judge failed to consider the significance of the evidence that the police investigation into the employee's death continued for a year and that there was no evidence the investigation had been closed. The police department's determination to pursue the investigation indicates that the weight of the evidence did not establish that the employee took his own life, either intentionally or accidentally. If he had taken his own life, whether intentionally, or accidentally, the police would have closed the investigation. The only reasonable deduction from the protracted investigation is that the Saudi police determined the evidence was insufficient to establish that the employee was responsible for his death. This determination was based upon the autopsy report, crime scene investigation reports, and witness statements taken proximate in time to the employee's death, including a statement from the witness who discovered the body. All of this highly probative evidence was absent from the record before the administrative law judge. Not only was the police department's determination based on the best evidence available, it was also made with the expertise of an institution authorized to make such judgments. The evidence that the police were unable to conclude that the employee caused his own death is entitled to determinative weight in this case. In view of this evidence, employer is unable to establish its affirmative defense of suicide and claimant is entitled to an award of benefits.[6]

[6]Because the evidence does not support the conclusion that the employee's death was either intentional or accidental, employer is precluded from requesting that the case be remanded to determine whether conduct resulting in accidental death necessarily disconnects the employee from the service of his employer. *See Gillespie v. General Electric Co.*, 21 BRBS 56 (1988), *aff'd mem.*, 873 F.2d 1433 (1st Cir. 1989) (table).

Conclusion

In sum, the administrative law judge properly applied the zone of special danger doctrine to find that the employee's death in Tabuk, Saudi Arabia was presumptively covered by the Act. She erred, however, in holding both that employer had rebutted the presumption of coverage with substantial evidence of suicide, and that the weight of the evidence established suicide.

The majority errs in affirming the administrative law judge's denial of benefits by failing to apply the zone of special danger doctrine to both invocation and rebuttal of the Section 20(a) presumption. As a result, the majority errs in holding that claimant has failed to substantiate her claim of coverage.

Since the employee died in his residence in a zone of special danger, the issue presented is whether employer has offered substantial evidence that the employee's death resulted from conduct in which the employee totally disconnected himself from the service of his employer. Employer attempted to do this with evidence of suicide. As the majority recognizes, however, employer failed to present substantial evidence of willful intent to kill himself. Most significantly, the most probative evidence, known only to the Saudi police, was insufficient to persuade them that the employee killed himself. The only reasonable deduction from the record in this case is that the evidence is insufficient to support the conclusion that the employee took his own life. As employer cannot rebut the presumption of coverage, claimant is entitled to an award of benefits.

Accordingly, I would vacate the administrative law judge's decision denying benefits, and remand the case for an award of benefits.

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REGINA C. McGRANERY
Administrative Appeals Judge